

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 10, 2015

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2013AP2598

Cir. Ct. No. 2010CV3032

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

HARRIS, NA,

PLAINTIFF-RESPONDENT,

v.

WHITE TOWER, LLC AND ANASTASIOS A. EVRENIADIS,

DEFENDANTS-THIRD-PARTY

PLAINTIFFS-APPELLANTS,

DANIEL BISHOP AND KONSTANTINOS F. MALTEZOS,

DEFENDANTS-APPELLANTS,

v.

PAUL BOURAXIS,

THIRD-PARTY DEFENDANT-RESPONDENT.

APPEAL from a judgment of the circuit court for Milwaukee County: MARY M. KUHNMUENCH, Judge. *Affirmed.*

Before Curley, P.J., Brennan, J., and Thomas Cane, Reserve Judge.

¶1 PER CURIAM. White Tower, LLC and Anastasios A. Evreniadis appeal from a judgment of foreclosure entered in favor of Harris, N.A., a successor to banks that loaned White Tower money to purchase five empty parcels of land that White Tower intended to develop.¹ The judgment also dismissed White Tower and Evreniadis's counterclaim against Harris and their thirty-party complaint against Paul Bouraxis. On appeal, White Tower and Evreniadis challenge the trial court's decision to dismiss their counterclaim and third-party complaint.² We affirm.

BACKGROUND

¶2 This case concerns a foreclosure and also a restaurant sale that involved some of the same parties. The record is voluminous, but not all of the factual allegations are relevant to the disposition of this appeal. The following background facts are offered to provide context for our decision, but they are not intended to be a complete recitation of the parties' interactions and litigation.

¶3 Bouraxis owned a corporation called Omega V, which operated the Omega restaurant. In 2006, Bouraxis sold his shares in the corporation to Evreniadis, Dan Bishop, and Konstantinos Maltezos for \$2.8 million, which

¹ According to Harris's brief, the bank is now known as BMO Harris Bank, N.A. The caption, however, has not been amended and we will refer to the bank as Harris in this opinion.

² White Tower and Evreniadis do not dispute that Harris was entitled to summary judgment based on White Tower's failure to make payments on the loan, and they do not assert that the money judgment of over \$2.1 million dollars is inaccurate. Rather, they contend that their counterclaims and third-party complaint should not have been dismissed, asserting that if those claims were successful, they would be entitled to damages that would offset some of the money judgment.

included the execution of a \$2.1 million promissory note. Franklin State Bank subsequently financed that \$2.1 million so that Omega V could pay off the promissory note. An additional \$200,000 was financed in July 2006. The bank notes matured in April 2009 and July 2009, respectively. Evreniadis, Bishop, and Maltezos all signed personal guaranties for Omega V's obligations to the bank. The loan officer who handled the Omega V loans was Bouraxis's nephew, Tino Arvanetes.

¶4 Evreniadis, Bishop, and Maltezos created another corporation, White Tower, and in March 2007, White Tower acquired the five land parcels at issue in this case. White Tower borrowed \$1.55 million from Lincoln State Bank, which was in the process of being merged with Franklin State Bank. Evreniadis, Bishop, and Maltezos all signed personal guaranties for White Tower's obligations to the bank. The loan was renewed in September 2007 and August 2008 and ultimately came due on December 31, 2008. Arvanetes served as the loan officer for the White Tower loans.

¶5 In 2008, Evreniadis, Bishop, and Maltezos sued Bouraxis for violating a non-compete agreement by operating another restaurant that competed with Omega. In August 2009, the parties reached an agreement and the case was dismissed based on the parties' stipulation.

¶6 In January 2010, Harris commenced suit to enforce the Omega V loans. In May 2010, Harris sold the Omega V loans to Bouraxis, and Bouraxis was substituted in place of Harris in the lawsuit. The lawsuit ultimately settled. Under the terms of the settlement, Evreniadis and Bishop sold their interest in Omega V to Maltezos, who continued to operate the Omega restaurant pursuant to an agreement with Bouraxis. In exchange, Bouraxis released Evreniadis and

Bishop from all claims associated with the Omega V loans. The trial court dismissed the suit with prejudice in July 2010.

¶7 Meanwhile, in March 2010, Harris brought this foreclosure action against White Tower, Evreniadis, Bishop, and Maltezos. It appears that Bishop and Maltezos were not active defendants in the case, due to Bishop's pending bankruptcy and the fact that Maltezos defaulted.³ However, White Tower and Evreniadis actively litigated the case.

¶8 In March 2011, a year after the foreclosure action was filed by Harris, White Tower and Evreniadis filed an amended answer and, for the first time, asserted a counterclaim against Harris, alleging: (1) breach of the duty of good faith and fair dealing; (2) tortious interference with contracts and prospective contractual relationships; (3) conspiracy pursuant to WIS. STAT. § 134.01 (2011-12);⁴ and (4) civil conspiracy. These claims were based on several allegations related to Omega V. For instance, White Tower and Evreniadis alleged that Bouraxis's relationship with the shareholders of Omega V (Evreniadis, Bishop, and Maltezos) "became hostile" as a result of the non-compete suit against Bouraxis. White Tower and Evreniadis further asserted that Bouraxis intended to regain control of the Omega restaurant and that the bank assisted him in doing so. They alleged that Bouraxis's nephew, Arvanetes, who worked at the various banks as they went through mergers and acquisitions, gave

³ Although Bishop and Maltezos did not litigate the case, the notice of appeal indicated that it was being filed on behalf of White Tower, LLC, Evreniadis, Bishop, and Maltezos. However, no appellate brief was filed on behalf of Bishop or Maltezos.

⁴ All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

confidential information to Bouraxis that led to the cancellation of the restaurant's long-term lease and the filing of an eviction action against Omega V.

¶9 White Tower and Evreniadis also complained that the bank sold its interest in the Omega V loans to Bouraxis, “which undermined the ability of ... Bishop and Evreniadis to put together a refinancing transaction or sale transaction of their own.” They alleged that Harris and Bouraxis “acted in combination to force Evreniadis and Bishop out of the Omega corporation and out of the Omega restaurant.” Finally, White Tower and Evreniadis asserted that “Harris’[s] combined actions with Bouraxis damaged the ability of White Tower to be developed into a commercial enterprise based on Harris’[s] damage of Omega as a commercial enterprise.”

¶10 In July 2011, White Tower and Evreniadis filed a third-party complaint against Bouraxis. They asserted that Bouraxis worked with the bank's employees, including Arvanetes, “to injure Omega, White Tower, and its shareholders, and to assist Bouraxis in an economic advantage at their expense.” White Tower and Evreniadis alleged the same four claims against Bouraxis that they raised in the counterclaim against Harris.

¶11 The case proceeded to summary judgment in early 2012. The trial court denied motions for summary judgment that were filed by Harris and Bouraxis, but later granted their motion for reconsideration concerning claims that White Tower and Evreniadis may be asserting on behalf of Omega V.⁵ Both

⁵ The Honorable Dominic S. Amato presided over the summary judgment motion hearings in 2012. The Honorable Mary M. Kuhnmuensch presided over subsequent motion hearings in 2013 and ultimately entered the judgment at issue on appeal.

Harris and Bouraxis petitioned the court of appeals for leave to appeal, but we denied the petitions and the case continued in the trial court.

¶12 The case was reassigned to a different trial court in August 2013. The trial court held multiple oral arguments concerning the issues remaining to be tried and ultimately concluded that Harris and Bouraxis were entitled to summary judgment granting the foreclosure and dismissing the counterclaim and third-party complaint. One basis for the trial court’s decision on the counterclaim and third-party complaint was its conclusion that White Tower and Evreniadis lacked standing to pursue claims on behalf of Omega V. This appeal follows.

DISCUSSION

¶13 On appeal, we review a grant of summary judgment *de novo*, using the same methodology as the trial court. *Estate of Sustache v. American Family Mut. Ins. Co.*, 2008 WI 87, ¶17, 311 Wis. 2d 548, 751 N.W.2d 845. “Summary judgment is proper when the record demonstrates that there is no genuine issue of any material fact and that the moving party is entitled to judgment as a matter of law.” *Phillips v. Parmelee*, 2013 WI 105, ¶16, 351 Wis. 2d 758, 840 N.W.2d 713; *see also* WIS. STAT. § 802.08(2). In light of the standard of review, we decline to discuss the extensive motion hearings and analysis by the two trial judges who heard this case. Instead, we turn to the dispositive issue: standing.⁶

¶14 “‘Standing’ is a concept that restricts access to judicial remedy to those who have suffered some injury because of something that someone else has

⁶ Because we decide this case based on standing, we do not consider other arguments presented by Harris and Bouraxis, such as assertions that White Tower and Evreniadis’s claims also fail because they cannot establish causation, a conspiracy, or damages.

either done or not done.” *Krier v. Vilione*, 2009 WI 45, ¶20, 317 Wis. 2d 288, 766 N.W.2d 517 (citation omitted). Standing is “liberally construed, and as such, standing is satisfied when a party has a personal stake in the outcome.” *Id. Krier* continued:

However, the plaintiffs must show that they suffered or were threatened with an injury to an interest that is legally protectable. Being damaged, however, without more, does not automatically confer standing. The universe of entities or people who could be affected or damaged by a corporation that ceases to do business is without bounds.

Id. (internal citation omitted). On appeal, we review independently whether a party has standing. *Park Bank v. Westburg*, 2013 WI 57, ¶37, 348 Wis. 2d 409, 832 N.W.2d 539.

¶15 As noted, the amended counterclaim and third-party complaint alleged that Harris and Bouraxis, conspired to harm White Tower and Evreniadis. White Tower and Evreniadis’s allegations included the following:

A key asset of Omega’s restaurant business, which provided the cash flow for both the Omega and White Tower loans, was a long term lease with Omega’s lessor, Southgate Marketplace, LLC (“Southgate”). This lease had a 16 year initial term with two 5 year options to further extend the lease, and in January, 2010, Omega was only in the first month of the 5th year of this lease – which, with options to extend, had more than 21 years left on its term. The terms of the lease included a provision to the effect that Southgate could terminate the lease if Omega defaulted on creditors’ obligations other than its landlord, even if Southgate was timely paid its rent. Omega at all times material, was current on its lease payments.

On or about January 14, 2010, Harris, acting through Mark Kauffmann, who had become the employee for Harris who was in charge of both the Omega and the White Tower Loan transactions, requested that Evreniadis send him a copy of Omega’s long term lease with Southgate. Mark Kauffmann represented that the bank needed a copy of the lease for internal purposes.

Contrary to this representation, Mark Kauffmann requested a copy of the lease because he had been asked to do so by Bouraxis, and was conferring with Bouraxis on a plan to put economic pressure on Omega, White Tower and its shareholders.

On January 20, 2010, which was four business days after counsel sent Mark Kauffmann a copy of the Southgate lease, Harris filed its complaint in the Omega case. Then within three business days of Harris'[s] filing its complaint in the Omega case, on January 25, 2010, Southgate sent Omega a Notice of Termination of Omega's lease with Southgate, stating, in pertinent part, as follows: [“]THIS LETTER SERVES AS NOTICE THAT THE LANDLORD HEREBY TERMINATES THE LEASE PURSUANT TO SECTION 10.3.1 C THEREOF, EFFECTIVE ON FEBRUARY 5, 2010 (THE “TERMINATION DATE”), ON GROUNDS THAT OMEGA HAS NOT PAID AND IS GENERALLY NOT PAYING ITS DEBTS AS THEY BECOME DUE. The Landlord has learned that Omega has been sued by Harris Bank in Milwaukee County case no. 10 CV 833 for Omega's failure to pay when due certain promissory notes owed to Harris Bank....[”]

On February 10, 2010, Southgate filed an eviction action against Omega in a case entitled Southgate Marketplace, LLC v. Omega V, Inc.[,] Milwaukee County Circuit Court Case No. 2010SC003863. The grounds for Southgate's eviction complaint were the same as the grounds set forth in Southgate's asserted notice of termination of Omega's lease with Southgate.

Faced with losing the entire business, Bishop and Evreniadis sought to put together a refinancing of the Omega loan or alternatively the sale of their shares in the Omega corporation. Among other things, they engaged in discussions with Bouraxis....

In May, 2010, Harris sold its loan position in the Omega case to Bouraxis. The circumstances of the sale of this loan position by Harris to Bouraxis were kept secret from Bishop and Evreniadis. Harris made a secret contract with Bouraxis which undermined the ability of Bishop and Evreniadis to put together a refinancing transaction or sale transaction of their own.

Harris and Bouraxis acted in combination to force Evreniadis and Bishop out of the Omega corporation and out of the Omega restaurant.

Harris'[s] combined actions with Bouraxis consequently injured White Tower and Evreniadis and damaged the ability of White Tower Property to be developed into a commercial enterprise based on Harris'[s] damage of Omega as a commercial enterprise.

(Paragraph numbering omitted.)

¶16 Harris argues that “[o]n their face, these allegations are derivative of any putative Omega claims,” and that neither White Tower nor Evreniadis has “standing to pursue these claims.” We agree. We begin with the lack of standing for White Tower. White Tower is a separate corporate entity from Omega V. While the owners of White Tower and Omega V “enjoyed certain advantages from doing business as [two] separate corporate entities, they also are bound by the disadvantages of forming separate corporations.” See *Krier*, 317 Wis. 2d 288, ¶25. Because White Tower is a separate corporate entity, it cannot raise claims on behalf of Omega V concerning the bank’s actions on Omega V’s loans.

¶17 White Tower and Evreniadis state that they “recognize that they cannot bring claims belonging to Omega or seek to recover Omega’s losses,” but they claim that “they seek to recover their own losses arising from the Bank’s and Bouraxis’[s] actions related to the Omega loan.” The problem with this analysis is that White Tower had no involvement in the Omega loan. Further, the counterclaim and third-party complaint allege that harm to Omega V affected White Tower’s commercial viability. *Krier* rejected the proposition that an actor can seek damages for actions taken against “a separate corporation [that] caused [the actor’s] business to be less lucrative.” See *id.*, ¶34. Consistent with *Krier*, White Tower lacks standing to assert claims against Harris and Bouraxis.

¶18 We further conclude that Evreniadis lacks standing to assert claims against Harris and Bouraxis based on their actions related to the Omega loans,

because his claims are derivative. *See Park Bank*, 348 Wis. 2d 409, ¶¶43, 48 (“[W]here an individual’s injury results from the corporation’s injury, the resulting claim is derivative and the individual lacks standing to raise it in a direct action.”) (“Only where a guarantor suffers direct injury, which ... is an ‘injury independent of the firm’s fate,’ may the guarantor pursue direct remedies.”) (citation omitted).

We agree with Harris:

Evreniadis seeks damages for the loss of his investment in Omega as a result of [Harris’s] alleged damage to Omega as a commercial enterprise. He has failed to allege any direct injury independent of any alleged injury to Omega. Under *Rose [v. Schantz]*, 56 Wis. 2d 222, 229, 201 Wis. 2d 593 (1972), *Krier*, and *Park Bank*, Evreniadis’s Counterclaims are derivative and were properly dismissed by the Trial Court.

(Record citation omitted.) For the same reason, Evreniadis’s third-party complaint is also derivative.

¶19 In summary, both White Tower and Evreniadis lack standing to pursue their counterclaim and third-party complaint against Harris and Bouraxis, respectively. Therefore, we affirm both the dismissal of those claims and the judgment.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.

